UNITED NATIONS **E**

Economic and Social Council

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...GENERAL

E/C.12/2000/SR.58
14 March 2002

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fourth session

SUMMARY RECORD OF THE 58th MEETING*

Held at the Palais Wilson, Geneva,
on Tuesday, 14 November 2000, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the 57th meeting.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of Portugal (E/1994/104/Add.20; HRI/CORE/1/Add.20; E/C.12/Q/POR/1; written replies of Portugal to the Committee's questions (document without a symbol distributed in the meeting room in French only))

1. At the invitation of the Chairperson, the Portuguese delegation took places at the Committee table.

2. The CHAIRPERSON welcomed the Portuguese delegation on behalf of the Committee and invited it to introduce its report.

3. Mr. DE MENDONÇA E MOURA (Portugal) said that his country attached great importance to economic, social and cultural rights; he paid tribute to the Committee for its work in promoting those rights and thanked it for having agreed to postpone consideration of Portugal's third periodic report.

4. Mr. DOS SANTOS PAIS (Portugal) said that in drawing up its third periodic report the Portuguese Government had taken into account the general guidelines for preparing reports, the Committee's general comments and the recommendations it had formulated after its consideration of the second periodic report. The third periodic report and the written replies, which were the result of close cooperation between the various ministries concerned, contained specific updated information not only on progress made but also on obstacles encountered in implementing the Covenant. For the sake of transparency, the Portuguese delegation had provided the Committee with a document containing comments by various NGOs on the third periodic report.

5. It was worth noting that the reports which Portugal submitted to the various treaty-monitoring bodies, the summary records of the discussions which had taken place during consideration of those reports and the recommendations of those bodies were published in a bulletin of comparative law, which was distributed free of charge to all judges and to many lawyers. The bulletin had also carried Portugal's report on implementation of the Vienna Declaration and Programme of Action.

6. There had been a number of important developments since the preparation of the third periodic report.

7. At international level, Portugal had played a decisive role in the self-determination of the people of East Timor and had returned Macao to the People's Republic of China, making certain that some hundred or so international instruments, notably the International Covenant on Civil and Political Rights, would remain in force there.

8. At domestic level, the Constitution had been amended and its provisions protecting the rights of women strengthened. A new Government had taken office and had done much to facilitate Internet access for the public to the various administrative services, so that it was possible to communicate with most of them by e-mail. To make for easier dealings with the administration, services had been grouped together in the same building in Lisbon, and the experiment, which had proved very successful, was to be extended to other cities. Lastly, the National Commission for the Protection of Human Rights had launched a large-scale information campaign on human rights and had produced educational material for the public at large and for a number of professions, such as judges, social workers and the police.

9. The CHAIRPERSON said that the Committee was pleased to engage in a dialogue with such a high-level delegation, in which women were very well represented.

10. Mr. RIEDEL was pleased that the Portuguese Government had taken the Committee's comments and recommendations into account in drawing up its report and that it published the reports submitted to the Committee as well as the records of meetings at which the reports had been considered.

11. He was, however, surprised that, according to the written reply to question No. 4 of the list of issues, only one NGO had agreed to cooperate in preparing the third periodic report, and he would therefore like to know what measures the Government intended to take to promote NGO involvement in implementing the Covenant.

12. Mr. SADI said that the high level of the Portuguese delegation and the quality of the periodic report and the written replies testified to Portugal's commitment to economic, social and cultural rights. He asked whether the provisions of the Covenant were taken fully into consideration by the executive power.

13. Mr. ANTANOVICH inquired whether Portugal's economic boom since its entry into the European Union in 1986 had resulted in a better implementation of the provisions of the Covenant.

14. Mr. WIMER ZAMBRANO asked the Portuguese delegation what specific obstacles prevented the pop lation from exercising its economic, social and cultural rights in full in everyday life.

15. Ms. JIMENEZ BUTRAGUEÑO wished to know whether the Covenant had already been invoked in the courts and, if so, whether there was any case law concerning its implementation.

16. Mr. THAPALIA asked what measures had been taken to combat violence against women, trafficking in women, discrimination against Roma, child labour and the sexual exploitation of children. In that connection, he pointed out that, in its concluding observations on Portugal's initial report (CRC/C/15/Add.45), the Committee on the Rights of the Child had noted that the principle of non-discrimination was not fully implemented for girls, disabled children and illegal immigrant children, non-accompanied children and children living in rural

areas, especially in the fields of education and health. He also wished to know what measures had been taken to eliminate gender inequality in salaries and in access to education and health care.

17. Mr. DOS SANTOS PAIS (Portugal) said that the Bureau of Comparative Law, which published the Bulletin of Comparative Law, provided committees responsible for legislative reform and the Parliament with very detailed information on Portugal's international obligations under the international instruments which it had ratified, as well as on case law relating to the application of the European Convention on Human Rights and other international human rights instruments.

18. The National Commission for Human Rights was made up of representatives of public bodies, but NGO representatives were in the majority. In general, the ministries and public bodies cooperated closely with the NGOs in their respective fields.

19. Portugal took the provisions of the Covenant fully into consideration when formulating policy at national level. The authorities referred increasingly to the provisions of international instruments and the concluding observations produced by the treaty-monitoring bodies when deciding on their activities. In order to encourage that practice, the members of the Portuguese delegation drew the attention of the ministers concerned, after consideration of each periodic report, to the recommendations of the Committee on Economic, Social and Cultural Rights regarding the preparation of the following report. The Portuguese Constitution also guaranteed those rights, and in some respects its provisions ensured a higher level of protection than the Covenant.

20. With regard to the full exercise of economic, social and cultural rights, any difficulties gave rise to judicial procedures as in the case of the implementation of civil and political rights. But in such areas, it was sometimes hard to prove that the policies or activities of the authorities did not take any or sufficient account of the rules. The Covenant itself had on occasion been invoked in court. An increasing number of cases had in fact been brought before the Constitutional Court in the 1980s and 1990s for violations of economic, social and cultural rights. The Public Prosecution Service had played a crucial role in that regard, providing information on the protection of human rights, the State's responsibilities in that area and international case law. The Portuguese courts did, therefore, refer to the international instruments in force in a given area, and in the process created their own case law.

21. Lastly, it should be stressed that violence, trafficking in women, discrimination against Roma, child labour and the sexual exploitation of children were central to the Portuguese Government's concerns. To combat those evils, it had set up a human rights training programme five years earlier for all professionals, such as the police, who were in contact with the most disadvantaged groups.

22. The CHAIRPERSON invited the members of the Committee to put questions to the Portuguese delegation on paragraphs 1 to 4 of the list of issues before turning to the articles of the Covenant as such.

23. Mr. SADI, regretting that Portugal's written reply had not been more precise, asked for further information on the implementation at national level of the recommendations contained in the Committee's concluding observations on the State party's previous reports (E/1980/6/Add.35/Rev.1; E/1982/3/Add.27/Rev.1; E/1990/6/Add.6).

24. Mr. KOUZNETSOV said that he would like to know why Portugal had not ratified ILO Convention No. 118 on equality of treatment. He pointed out that pursuant to article 2 of the International Covenant on Economic, Social and Cultural Rights, States parties undertook to guarantee that the rights enunciated therein would be exercised without discrimination of any kind.

25. Mr. ANTAGANA, noting that the NGOs had not been consulted until after the third periodic report had been completed, asked whether, in the light of the comments made by those organizations, Portugal had altered the document in any way before disseminating it throughout the country.

26. Mr. DOS SANTOS PAIS (Portugal) explained that Portugal's reply on the implementation of the recommendations contained in the Committee's concluding observations on previous reports had been merely preliminary and that Portugal would be providing additional information as soon as possible.

27. On NGO involvement in preparing the report, he said that for lack of time, the Government had not been able to consult those organizations prior to submitting the third periodic report to the Committee. However, they had been sent a copy of the report so that they could make their comments known either to the Government, which would then forward them to the Committee, or directly to the latter. To his knowledge, all the observations communicated to the Government had been forwarded to the Committee as they stood. The Portuguese Government was aware of the potential contribution of NGOs to subsequent periodic reports, and would make sure that those bodies were duly consulted at the time of drafting.

28. Ms. NETO (Portugal), replying to question No. 2 on the list of issues, said that, in the overall State budget, the proportion of public expenditure on the social sector had grown from 54.6 per cent in 1999 to 56 per cent in 2000, a rise of 290 billion escudos. The increases were particularly noticeable in social security (more than 120 billion escudos), health (more than 80 billion escudos) and education (more than 78 billion escudos), which clearly showed the priority which Portugal attached to that sector.

29. Ms. ALBUQUERQUE (Portugal) provided further information in reply to question No. 3 on the position of the Government of Portugal with regard to the recommendation of the World Conference on Human Rights concerning the preparation of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Portugal had always been in favour of the adoption of an optional protocol which recognized the right of individuals or groups alleging violations of the rights enshrined in the Covenant to submit communications concerning non-compliance with that instrument. In Portugal's view, the procedure for considering communications should be applicable to all the rights set out in articles 1 to 15 of the Covenant.

Articles 1 to 5 of the Covenant

30. The CHAIRPERSON invited the members of the Committee to ask the Portuguese delegation questions concerning articles 1 to 5 of the Covenant.

31. Mr. HUNT asked whether Portugal had prepared a national plan of action for human rights in pursuance of the recommendation contained in paragraph 71 of the Vienna Declaration and Plan of Action. If not, did it intend to do so? Also, did the Portuguese institutions responsible for monitoring respect for human rights focus in practice on all economic, social and cultural rights in a consistent and systematic manner? Were those bodies in conformity with the Paris principles of 1991, which concerned their establishment and organization? In particular, were they independent of the public authorities? Were the provisions of the Covenant fully taken into account in preparing policy? That was not possible unless appropriate mechanisms existed, such as the presence of an official responsible for human rights questions in the Ministries of Housing or Public Health. Such mechanisms ensured that human rights were not overlooked when policies were being drafted. More particularly, he asked whether the Covenant was taken into consideration in Portugal's foreign policy. To be sure, article 71 of the Constitution made such provision, but were the obligations enunciated by the Covenant specifically built into Portugal's foreign policy, for example in its relations with international organizations? Lastly, could the Portuguese delegation say whether, although China had not ratified the Covenant, Macao would be submitting a report to the Committee on Economic, Social and Cultural Rights, as in the case of Hong Kong?

32. Mr. RIEDEL inquired whether the Portuguese language could recover its former status in East Timor, as the population of the territory seemed to wish. He would also like to obtain further information on the somewhat puzzling use of the term "race" in court decisions concerning Gypsies.

33. Mr. ANTANOVICH asked whether Portugal provided East Timor with technical assistance in institution-building in order to promote the self-determination of the territory. If so, what had been the initial results?

34. Mr. WIMER ZAMBRANO wanted to know why Portugal had not signed ILO Convention No. 169 on indigenous peoples' rights.

35. Mr. AHMED said that the reference to the "ethnic purity of Gypsies" by Portuguese courts had been unfortunate. More generally, according to his information, Portugal refused to give asylum to groups such as the Roma because it did not recognize that they had been victims of discrimination in their country of origin. Asylum-seekers from Angola experienced similar problems owing to the close political ties between that country and Portugal. Generally speaking, refugees on Portuguese territory met with many technical difficulties that could easily be avoided. For example, the special identity card issued to refugees was not always accepted: banks in addition required a residence permit, which refugees did not possess. He would like an explanation for those inconsistencies, which did not mean that human rights in general were not respected in Portugal.

36. Mr. CEVILLE asked whether there were laws that protected vulnerable persons such as the disabled from discrimination in areas like employment and teaching, not only in the public sector, as was already the case, but also in the private sector. How did the ombudsman intervene in cases of discrimination and, more generally, to defend human rights? What ties existed between the ombudsman and the authorities?

37. Mr. DOS SANTOS PAIS (Portugal) said that Portugal had not yet adopted a plan of action for human rights, probably because it still did not have a human rights committee. Most of the action taken by the Public Prosecution Service in the area of human rights was the result of initiatives taken by the Institute of Human Rights. The prosecutor's office was independent of the Government, and as it was responsible for ensuring that the law was respected, made sure that government actions did not infringe human rights. In addition, several official bodies were involved in the defence of human rights, for example by establishing codes of behaviour with which the administration had to comply in its relations with citizens and by publishing brochures informing people of their rights and of the recourse available if they were violated.

38. With regard to human rights institutions, their means of action varied. The ombudsman could take action if economic, social or cultural rights were violated. The ombudsman, responsible for monitoring the activities of the public authorities, made recommendations to the Government, which were followed in 80 per cent of cases. Various committees checked whether government departments respected human rights in specific areas. They acted as focal points for questions of a cross-sectoral nature. Their work concentrated in particular on persons likely to be victims of acts of discrimination. For example, there was a committee on the equality and rights of women and a committee on ethnic minorities. On the question of whether human rights institutions were independent, that was the case not only for the ombudsman and the Public Prosecution Service, but even for committees that acted independently within particular ministries. Their recommendations were followed in most cases. With regard to whether the Covenant was taken into account when preparing policy, he said that economic, social and cultural rights were a constant concern, and every effort was made to apply them in practice. That was so in domestic affairs and more often than not in the area of foreign policy too.

39. Portugal's attitude towards East Timor was essentially related to human rights considerations. The same applied to the policy it pursued with former African colonies, especially in the area of development cooperation. Concerning the special autonomous region of Macao, his Government intended to submit a report to the Committee on Economic, Social and Cultural Rights, as it had done in the case of the Committee on Civil and Political Rights. Portugal had succeeded in ensuring that several human rights instruments were applicable in Macao.

40. With regard to the Portuguese language, since August 2000 it had enjoyed the status of official language alongside an indigenous language.

41. Officially in Portugal there was no such notion as "race" and it did not appear, for instance, on census forms. There had been no recurrence of its use in court decisions, as mentioned earlier. In 1979, the Committee on the Elimination of Racial Discrimination had concluded that the situation in Portugal was satisfactory. That same year, Portugal had passed legislation prohibiting racial discrimination and providing for the establishment of a committee

to monitor its implementation. In 1999, the Parliament had passed a law allowing for complaints against racial discrimination to be lodged with the administrative courts. Any person exposed to racial discrimination could sue for damages. In other words, Portugal combated racial discrimination at all levels, criminal, administrative and civil.

42. Ms. FERNANDES (Portugal) said that the aim of the Office of the High Commissioner for Immigration and Ethnic Minorities was to promote the economic and social integration of the most vulnerable groups, including immigrants. The Gypsies were considered to be an ethnic minority, although they had been full-fledged Portuguese citizens since the nineteenth century. Act No. 17/96 provided a special procedure for legalizing clandestine immigrants, on the basis of which an estimated 35,000 foreigners had been given papers in 1996. The Act had set up a monitoring body composed of representatives of associations of immigrants, human rights associations and trade unions. The aim of giving illegal immigrants legal status had of course been to enable foreigners who had entered the country without a work permit to enjoy full economic, social and cultural rights.

43. With regard to the notion of race, there was only one race, the human race, and the purpose of referring to such characteristics as skin colour, nationality or membership of an ethnic group - which were often associated with race - was to identify possible forms of discrimination so as to be able to combat them more effectively. The Office of the High Commissioner for Immigration and Ethnic Minorities put out a monthly bulletin addressing all those questions. Recently, it had published the comments of a physician who had stated that from a biological point of view the notion of race was meaningless.

44. Ms. ALBUQUERQUE (Portugal), replying to the question on East Timor, said that the Portuguese Government had supported the right to self-determination of the people of East Timor and had spared no effort at international level to resolve the conflicts concerning that territory. In 1999, an agreement had been concluded between Portugal and Indonesia under the auspices of the Secretary-General of the United Nations; the referendum on self-determination organized that same year had unfortunately been followed by serious violence. Portugal had then supported the convening of an extraordinary session of the Commission on Human Rights as well as the deployment on the spot of an international force.

45. The Portuguese Government provided East Timor with assistance that was both bilateral (in the areas of education, police training, health care etc.) and multilateral (for example, in the framework of the United Nations Mission in East Timor (UNAMET)).

46. Concerning the serious violations of human rights committed in the aftermath of the referendum, the international commission of inquiry on East Timor set up on the initiative of the Commission on Human Rights, as well as several special rapporteurs of the Commission had looked into the situation in East Timor. The Indonesian Government had promised to bring perpetrators of violations to trial, and the UNAMET had been put in place. The Portuguese Government continued to follow events in East Timor closely.

47. Mr. DOS SANTOS PAIS (Portugal), replying to questions on the right to asylum, said that it was possible that once upon a time some organization had not accepted a refugee's identity card, but he could not usefully add anything more on the subject. On the other hand,

he could give the members of the Committee additional information on the Portuguese authorities' conditions for granting the right to asylum. Those conditions had recently been amended by Act No. 15-98, which provided three forms of protection: the grant of actual asylum to persons persecuted in their own countries because of their political or social activity; the grant of a temporary residence permit for humanitarian reasons to persons not in the first category; and the grant of temporary protection, for a period of not more than two years, to persons who were the victims of armed conflict in their country. Protection under the last category had been granted, for example, to persons from Kosovo and Guinea. Act No.15-98 also allowed for the extension of asylum to include the members of the applicant's family and thus f' 'oured family reunification. Asylum applications were considered by the Director of the Aliens and Frontiers Department, whose decision could be contested, with suspensory effect, before the National Commissioner for Refugees. The latter's decision could be appealed in an administrative court of first instance. The Minister for the Interior had the final decision, which could in turn be appealed before the Supreme Administrative Court. A temporary residence permit was issued pending the final outcome.

48. The measures taken by the public authorities to combat all forms of discrimination applied not only to State administrations and bodies but also to companies in the private sector. As the principle of non-discrimination was anchored in the Constitution, it was compulsory for all. However, the administration also set its own rules.

49. The institution of the ombudsman was working satisfactorily. The ombudsman made recommendations to the administrations, and most of them were taken into consideration.

50. Mr. GRISSA asked, with regard to Macao, how residents were defined, what their status was and whether there were immigrant workers and refugees there. What exactly was East Timor's current status?

51. Mr. HUNT wished to know whether and to what extent the Portuguese Government promoted respect for economic, social and cultural rights in the spirit of the Covenant within the specialized agencies of the United Nations, such as WHO and UNESCO, or in the framework of the World Bank and IMF.

52. Ms. ALBUQUERQUE (Portugal) replied that East Timor was neither a Portuguese nor an Indonesian territory. It had been placed under the administration of the United Nations for a transition period and might become independent in one year's time.

53. Mr. DOS SANTCS PAIS (Portugal) said that the Portuguese authorities had applied the same protection to all residents of Macao, and he hoped that that principle would remain in force. As for the manner in which the Portuguese authorities promoted the Covenant in international institutions, he said that the defence of human rights was at the heart of all the Government's policies and its cooperation with countries that needed it. Thus, in the context of the European Union and other bodies, Portugal encouraged the holding of elections, the training of teachers and the improvement of health-care services by different human and financial means.

Articles 6 to 8 of the Covenant

54. The CHAIRPERSON invited the members of the Committee and the Portuguese delegation to consider subjects addressed in questions 11 to 16 of the list of issues.

55. Mr. ANTANOVICH said that he had been very impressed by the detailed reply given to question 11 on measures taken by the Government to combat unemployment. Noting, however, that most of those measures had been adopted by legislative decree or by orders emanating from the ministries, he wondered why the Government had not preferred to legislate at a more general level and to introduce employment measures on a long-term basis. He would also like to have more information on the "integration enterprises" set up pursuant to Order No. 348-A/98, referred to in the written replies. What were the exact terms of reference of those non-profit-making corporations? Were they responsible for training and retraining the long-term unemployed? Did they offer stable employment? What was the proportion of unemployed persons in a disadvantaged situation hired by an integration enterprise?

56. Mr. GRISSA noted that, in comparison with other European countries, Portugal had a relatively low unemployment rate, but that it was on the rise. Given that a large percentage of unemployment in Europe was due to a mismatch between supply and demand, i.e. between worker training and the new needs of the economy, he wondered whether some degree of flexibility had been introduced into labour relations in Portugal. Was Portugal similar to countries such as France or Spain, where trade unions were resisting changes in working conditions, or was it more like the United Kingdom or the United States of America, where the acceptance of a degree of flexibility and adaptation to new working conditions were seen as a way of combating unemployment?

57. Mr. WIMER ZAMBRANO, taking the previous speaker's question one step further, asked what the effects of globalization were at administrative, economic and trade union level, as well as in labour relations.

58. Mr. SADI inquired whether the IMF and the World Bank had insisted that the Portuguese authorities adopt economic and financial measures.

59. Mr. AHMED asked what percentage of Portuguese workers were employed abroad and whether it was expected that a large number of Portuguese emigrants would return to the country when the euro zone became a reality in Europe.

The meeting rose at 1 p.m.